

### § 18.3

which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(b) *Adjudicative officer* means the official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

### § 18.3 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in §§18.11 through 18.14 of this part, has been filed with the Department within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

[53 FR 6798, Mar. 3, 1988]

### § 18.4 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department and to appeals of decisions of contracting officers of the Department made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section 8 of that Act (41 U.S.C. 607). Adversary adjudications conducted by the Department are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Pursuant to section 8(c) of the Contract Disputes Act (41 U.S.C. 607(c)), the Department has arranged for appeals from decisions by contracting officers of the Department to be decided by the General Services Administration Board of Contract Appeals. This Board, in accordance with its own procedures, shall be

### 15 CFR Subtitle A (1-1-13 Edition)

responsible for making determinations on applications pursuant to the Act relating to appeals to the Board from decisions of contracting officers of the Department. Such determinations are final, subject to appeal under §18.23. Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The Department proceedings covered are:

(1) *Department-wide.* (i) Title VI Civil Rights hearings conducted by the Department under 42 U.S.C. 2000d-1 and 15 CFR 8.12(d).

(ii) Handicap discrimination hearings conducted by the Department under 29 U.S.C. 794(a) and 15 CFR 8.12(d).

(2) National Oceanic and Atmospheric Administration ("NOAA")

(i) Proceedings concerning suspension, revocation, or modification of a permit or license issued by NOAA.

(ii) Proceedings to assess civil penalties under any of the statutes administered by NOAA.

(3) *International Trade Administration.* Enforcement proceedings under the AntiBoycott provisions of the Export Administration Act of 1979, 50 U.S.C. app. 2407.

(4) *Patent and Trademark Office.* Disbarment proceedings of attorneys and agents under 35 U.S.C. 32.

(b) The Department may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Department's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

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